IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1885 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AMBALAL LALLUBHAI PANCHAL (RANERWALA)

Versus

LIC OF INDIA

Appearance:

1. First Appeal No. 1885 of 1998

MR MEHUL SHARAD SHAH for Petitioner

MR RK MISHRA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

Date of decision: 08/03/99

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

This appeal raises an important question as to whether death caused by a dog bite can be said to be death caused by an accident so as to make the Life

Insurance Corporation liable to pay an additional sum equal to the sum assured under the accident benefit clause of the Policy.

2. The appeal is directed against the judgement and order dated 12.1.1998 of the learned Civil Judge (Senior Division), Patan in Special Civil Suit No. 179/94 to the extent that it disallows the additional payment under the accident benefit clause to the appellant - original plaintiff, who filed the suit to recover the dues under the two Policies which were taken out to insure the life of his son Vikarm for Rs. 50,000/- each on 1.2.1989 and 28.3.1989. These Policies contained an accident benefit clause, which entailed payment of an additional sum equal to the sum assured under the Policy, if the death was caused as a result of an accident as contemplated by that clause. On this basis, appellant had claimed Rs. 1 lac under each of the two Policies, which are at Exhibits 37 and 38. According to the appellant plaintiff, his son Vikram was bitten by a rabid dog on 18.4.1989, for which he was hospitalised and while under treatment, he died on 28.4.1989. On the death of his son, the appellant put up a claim with the Life Insurance Corporation, but the claim was repudiated on 26.10.1990. The appellant therefore carried his grievance to the Zonal Office, but with no avail. He therefore, filed a Suit claiming Rs. 2 lacs under the two Policies and Rs. 54,000/- by way of interest at the rate of 12% from 29.4.1989 to 29.7.1991, as also Rs. 2,500/- being the amount of expenses incurred by him.

3. The respondent - LIC by its written statement Ex.12 contested the claim, contending that the deceased had not disclosed material facts regarding the state of his health and the medical treatment, which was taken by him and therefore, the LIC was justified in repudiating the claim. It was contended that the contract of Insurance had become null and void, in view of the suppression about the state of his health by the deceased. It was also contended that the death was suicidal.

4. The trial Court held that the deceased Vikarm had paid the premiums in respect of the two Policies in question, which were of Rs. 50,000 each, taken out for assuring his life. It was also held that Vikram had died on 28.4.89 due to dog bite, which he suffered on 18.4.1989. The trial Court held that the death was caused due to cardiac respiratory failure that had resulted because of rabies caused due to a bite by a rabid dog and that the death was not suicidal, as was

tried to be contended by the LIC.

The trial Court, however, found that the ingredients of the accident benefit clause were not established because the injury and resultant death caused by a dog bite cannot be said to have been caused by an accident, as contemplated by that clause. It was therefore, held that the appellant was not entitled to recover the additional sum payable under the accident benefit clause.

5. The learned Counsel appearing for the appellant contended that death of Vikarm was proved to have been caused by bite given by a rabid dog. The medical evidence consisting of the deposition of Dr. Mansingh Chaudhary at Ex.50, and the medical case papers at Ex.51 and Ex.52 clearly showed that the death was caused due to rabies caused by a dog bite. It was submitted that the evidence clearly negatived the theory of death being caused by suicide. The vicera, which was sent for examination clearly showed that no poison was consumed by the deceased and the report of witness Poonambhai G. Kachhiya at Ex.62, who is an employee of LIC, as admitted by him, was based on conjectures drawn from the fact that the deceased had an unhappy married life. The Counsel contended that the meaning of the word `accident' was wide enough to include such mishap that had occurred by a dog bite and resultant death of Vikarm. He therefore, submitted that the appellant was entitled to the additional payment under the accident benefit clause in these Policies.

6. The learned Counsel appearing for the respondent Corporation contended that the injury due to a dog bite and death resulting therefrom cannot be said to be an accident. He submitted that any occurrence which is expected to happen, cannot be termed as an accident. He argued that even if a person goes near a sleeping dog, he takes the risk of being bitten by it. According to him, what can be avoided by proper care and caution, cannot be termed as an accident. Giving an illustration, the Counsel submitted that if a person goes near a pet dog, which is not expected to bite and yet is bitten by such dog, that can be termed as an accident, but if a person goes near a stray dog, then he should expect to be bitten by a stray dog and since such event is expected, it would not be an accident. The learned Counsel further argued that if a person is careless or negligent and the event occurs, then such an event cannot be termed as an accident. A person should make an effort to avoid a mishap and should act with reasonable diligence to ensure

that he does not put himself in peril of an accident. He submitted that if no attempt is made to avoid the danger or when the person acts negligently and carelessly, then the injury or harm that may be caused, cannot be said to have been caused by an accident.

7. The word "accident" has a very wide significance in its ordinary sense. In the present case, we are not concerned with the philosophical meaning of the expression "accident". The word, though easy to understand when used in any particular context, is found to be difficult to define in a manner that would encompass all its shades of meanings. The expression `accident' generally means some unexpected event happening without design, even though there may be negligence and it is used, in a popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not brought about by intention or design. It is however, unnecessary to attempt any uniform definition of a term which has the utility of answering varied situations.

This term has to be applied in law to any occurrence or result that could not have been foreseen by the agent (because not necessarily involved in his action) or to a result not designed (and therefore, presumably not foreseen) or lastly to anything unexpected. The question as to what will and will not constitue an accident under a given circumstance would depend upon the facts of each particular case and would be a mixed question of law and facts. Accidents can broadly be divided in to two categories, viz. where there is some external act, agency or mishap and those where there is no such external act, agency or mishap. In legal contemplation, accident happens without any designed, intentional or voluntary causation such as an occurrence which happens by reason of some violence, casualty or vis major without any design or consent or voluntary co-operation. An unexpected personal injury resulting from an unlooked-for mishap or occurrence would be an accident. The word "accident" would get its colour from the context in which it is used. The word has fallen for our interpretation in context of the following accident benefit clause in a Life Insurance Policy and in context of the question whether death due to dog bite is an accident within the meaning of this clause, so as to merit payment of additional sum equal to the sum assured under this clause.

"10. Accident Benefit : If at any time when

this Policy is in force for the full sum assured, the Life Assured before the expiry of the period for which the premium is payable or before the policy anniversary on which the age nearer birthday of the Life Assured is 70, whichever is earlier, is involved in an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the Corporation agrees in the case of

(a) xxx xxx xxx

(b) Death of the Life Assured : To pay an additional sum equal to the Sum Assured under this policy, if the Life Assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward violent and visible means and such injury shall within 90 days of its occurrence solely, directly and independently of all other causes result in the death of the Life Assured. However, such additional sum payable in respect of this policy together with any such additional sums payable under other policies on the life of the Life Assured shall not exceed Rs. 5,00,000/-.

The Corporation shall not be liable to pay the additional sum referred in (a) or (b) above, if the disability or the death of the Life Assured shall:-

(i) be caused by intentional self injury, attempted suicide, insanity or immortality or whilst the Life Assured is under the influence of intoxicating liquor, drug or narcotic; or

(ii) take place as a result of accident while the Life Assured is engaged in aviation or aeronautics in any capacity other than that of a fare paying part paying or non paying passenger in any aircraft which is authorised by the relevant regulations to carry such passengers and flying between established aerodromes, the Life Assured having at that time no duties on board the aircraft or requiring descent therefrom, or

(iii) be caused by injuries resulting from riots, civil commotion, rebellion, war (whether war be declared or not), invasion, hunting, mountaineering, steeple-chasing or racing of any

kind;

(iv) result from the Life Assured committing any breach of law, or

(v) arise from employment of the Life Assured in the armed forces or military service of any country at war (whether war be declared or not) or from being engaged in police duty in any military, naval or police organisation.

The extra premium of this benefit will not be required to be paid after all premiums under this Policy have been paid or on and after the Policy anniversary on which the age nearer birthday of the Life Assured is 70 years, whichever is earlier."

It will be seen that the word "accident" used in this clause is not circumscribed to any narrow meaning. What has been excepted from the liability of the insurer has been specifically mentioned in the said clauses (i) to (v) of clause 10(b). All that is required for this clause to operate is that the bodily injury sustained by the Life Assured results solely and directly from the accident caused by "outward violent and visible means", which injury has resulted in the death of the Life Assured within the period as contemplated by the clause.

8. The contention on behalf of the Corporation is that if the contingency is expected to occur, it cannot be said to be an accident and if one can reasonably foresee the occurrence, it would cease to be an accident. In our view, such expectancy test would be a fallacious test. When an unexpected injury occurs then it can be termed as an accident, but that does not mean that whenever any injury is expected, then it could never be an accident. If likelihood of an occurrence in abstract thinking is to be the test, then there would hardly be anything which is not thought of as a likely occurrence by men. One can always expect animals to bite or gore but when a person is himself bitten or gored by an animal, that would be an unexpected harm to that person. Mere knowledge of hazard of an occurrence will not take it away from the category of accident in its general sense. Albeit, the law may in a given context define accident to restrict its wider meaning and dilute it to what is called a `pure accident', but there is no warrant

for such restricted meaning in context of the above clause of the Insurance Policy.

9. The argument that if the occurrence could be avoided by reasonable diligence or that if negligence or carelessness have contributed to the event, it should not be treated as accident, if accepted, would abort the very purpose underlying such Insurance Policy which does not circumscribe the word accident beyond stating that it should have been caused by `outward violent and visible means'. In its ordinary meaning word accident does not negative the idea of negligence on the part of the person whose act brought about that event. An accident may arise from the carelessness of men, and the fact that the negligence of the person injured contributed to produce a result will not make it any less an accident and in this sense accident can be defined as a fortuitious event which may be preventable but is not prevented or an unexpected or unforeseen event happening with or without human fault. The term accident is thus, more comprehensive than the term negligence, and, often the terms "pure accident" or "mere accident" or "unavoidable accident" are employed in the legal context where accidents occurring due to negligence are to be ruled out or excluded from the ordinary meaning of the word accident. In the context of an Insurance Policy to exclude negligence, by the very nature of things, will make the indemnity practically valueless. Therefore, barring the exceptions which are enumerated in the clause itself, all accidents which are caused by "outward, violent and visible means" would be covered whether or not caused by carelessness or negligence or whether or not expected and avoidable. The concept of duty to take reasonable care which is relevant in respect of liability arising out of the tort of negligence need not be imported in a clause of Insurance Policy which assures accident benefits in respect of the loss caused from any accident by `outward, violent and visible means'. There is no warrant to qualify this clause by carving out any exception on the grounds such as carelessness, negligence, avoidability etc. The only exceptions that apply are those which have been specifically enumerated and for all other eventualities which can be described as accident in its general and non-technical sense the liability to pay the accident benefit arises when the accident is caused by outward violent and visible means. This qualification is meant to provide for ascertainability of the event. A dog bite is not brought about by any design or intention. It is an unexpected harm. A dog bite is surely something that is outward, violent and visible by which the harm is brought about

and the death resulting therefrom would therefore in our opinion be a death resulting from an accident caused by outward, violent and visible means within the meaning of the accident benefit clause of the policy under which the LIC was bound to pay an additional sum equal to the sum assured under the policy.

10. Since death of Vikram was caused by a dog bite, which resulted in rabies as has been amply established before the trial Court which fact is not disputed before this Court by the Corporation, it was a death resulting from an accident and since it was within the stipulated period, the appellant - plaintiff was entitled to an additional sum equal to the sum assured under the policy as per the accident benefit clause contained in these policies.

The appeal is therefore, allowed and the appellant's suit is hereby decreed even for the additional amount of Rs. 1,27,000/- to be paid with interest at the rate of 12 per cent from the date of the filing of the suit, till the realisation of the amount. There shall be no order as to costs.

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